Porter Industries Environmental Services Company *and* International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, AFL–CIO (UAW), Local 1921. Case 15–CA–160559

May 27, 2016

DECISION AND ORDER

BY CHAIRMAN PEARCE AND MEMBERS MISCIMARRA AND HIROZAWA

The General Counsel seeks a default judgment in this case on the ground that the Respondent has failed to file an answer to the amended complaint. Upon a charge and an amended charge filed by International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, AFL–CIO (UAW), Local 1921 (the Union) on September 22, 2015, and January 15, 2016, respectively, the General Counsel issued an amended complaint on January 20, 2016, against Porter Industries Environmental Services Company (the Respondent), alleging that the Respondent has violated Section 8(a)(5) and (1) of the National Labor Relations Act.[1] The Respondent failed to file an answer.

On March 22, 2016, the General Counsel filed a Motion for Default Judgment with the Board. Thereafter, on March 24, 2016, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Default Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in a complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. Here, the amended complaint affirmatively stated that unless an answer was received by February 3, 2016, the Board may find, pursuant to a motion for default judgment, that the allegations in the amended complaint are true. Further, on February 1, 2016, the Acting Regional Director issued an Order extending the time for the Respondent to file an answer to the amended complaint to March 2, 2016. Nevertheless, the Respondent failed to file an answer.[2]

In the absence of good cause being shown for the failure to file an answer, we deem the allegations in the amended complaint to be admitted as true, and we grant the General Counsel's Motion for Default Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent has been a corporation with a job site at the Michoud Assembly Facility (MAF) in New Orleans, Louisiana (the Respondent's facility), and has been engaged in the business of providing janitorial and related environmental services.

Annually, in conducting its operations described above, the Respondent provided services valued in excess of $50,000 for Jacobs Technology, Inc., an enterprise within the State of Louisiana.

Jacobs Technology, a Tennessee corporation, is engaged in the business of facility maintenance and operations for the manufacturing support and facility operations contract at the MAF.

Annually, in conducting its operations described above, Jacobs Technology purchased and received goods in excess of $50,000 directly from points located outside the State of Louisiana.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

At all material times, an unnamed attorney held the position of the Respondent's attorney and has been an agent of the Respondent within the meaning of Section 2(13) of the Act.

[1] The initial charge filed by the Union on September 22, 2015, and the complaint issued by the General Counsel on December 28, 2015, named "Porter Industries, Inc." as the Charged Party and the Respondent, respectively. On January 10, 2016, Porter Industries, Inc. filed a motion to dismiss the complaint, alleging that it was not a correct party in this matter. It also filed an answer denying most allegations, either because it was "without sufficient information to admit or deny the allegation," or it was not the correct party. On January 20, 2016, the General Counsel amended the complaint by correctly naming Porter Industries Environmental Services Company as the Respondent. On February 19, 2016, the Board's Associate Executive Secretary issued a letter stating that Porter Industries, Inc.'s motion to dismiss was moot. We find that Porter Industries, Inc.'s answer is also moot.

[2] The complaint, the amended complaint, the Motion for Default Judgment, and the Notice to Show Cause in this proceeding were served on Ken Porter, the Respondent's owner and president, at the Respondent's business address. In addition, the Motion for Default Judgment and the Notice to Show Cause were served on Carl Butler, the Respondent's registered agent. Therefore, we find that the error in nomenclature in the original complaint does not provide good cause for the Respondent's failure to file an answer.

The following employees of the Respondent (the unit) constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> Included: all janitorial employees at the MAF; Excluded: all other employees, office clerical employees, guards and supervisors as defined by the Act.

On May 3, 2010, the Board certified the Union as the exclusive collective-bargaining representative of the unit, and at all material times since that date, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the unit. About July 6, 2015, the Union, by email, requested that the Respondent bargain collectively with the Union as the exclusive collective-bargaining representative of the unit, and since about that date, the Respondent has failed and refused to bargain with the Union.

CONCLUSION OF LAW

By the conduct described above, the Respondent has been failing and refusing to bargain collectively and in good faith with the Union as the exclusive collective-bargaining representative of its unit employees, in violation of Section 8(a)(5) and (1) of the Act. The Respondent's unfair labor practices described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has violated Section 8(a)(5) and (1) of the Act by failing and refusing, since about July 6, 2015, to bargain with the Union as the exclusive collective-bargaining representative of unit employees, we shall order the Respondent to bargain with the Union, on request, and if an understanding is reached, to embody the understanding in a signed agreement.

ORDER

The National Labor Relations Board orders that the Respondent, Porter Industries Environmental Services Company, New Orleans, Louisiana, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to bargain collectively and in good faith with International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, AFL–CIO (UAW), Local 1921 (the Union), as the exclusive collective-bargaining representative of the employees in the bargaining unit.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive collective-bargaining representative of the employees in the following appropriate unit concerning terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

> Included: all janitorial employees at the MAF; Excluded: all other employees, office clerical employees, guards and supervisors as defined by the Act.

(b) Within 14 days after service by the Region, post at its facility in New Orleans, Louisiana, copies of the attached notice marked "Appendix."[3] Copies of the notice, on forms provided by the Regional Director for Region 15, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. If the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since July 6, 2015.

(c) Within 21 days after service by the Region, file with the Regional Director for Region 15 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. May 27, 2016

[3] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

Mark Gaston Pearce, Chairman

Philip A. Miscimarra, Member

Kent Y. Hirozawa, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT fail and refuse to bargain collectively and in good faith with International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, AFL–CIO (UAW), Local 1921 (the Union), as the exclusive collective-bargaining representative of our employees in the bargaining unit.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL, on request, bargain with the Union as the exclusive representative of our employees in the following appropriate bargaining unit concerning terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

> Included: all janitorial employees at the MAF; Excluded: all other employees, office clerical employees, guards and supervisors as defined by the Act.

PORTER INDUSTRIES ENVIRONMENTAL SERVICES COMPANY

The Board's decision can be found at www.nlrb.gov/case/15-CA-160559 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273–1940.